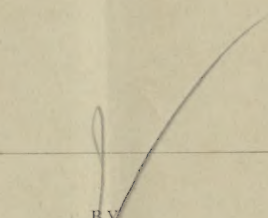


Bell (C.)

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PROPOSED REFORMS IN THE  
CORONER'S OFFICE.

  
BY  
CLARK BELL, Esq.,  
NEW YORK.

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## ADDRESS

OF CLARK BELL, ESQ., OF NEW YORK, DELEGATE FROM THE MEDICO-LEGAL  
SOCIETY OF NEW YORK.

MR. PRESIDENT AND GENTLEMEN OF THE MEDICAL SOCIETY OF THE STATE OF NEW YORK: In responding to the request of your officers, to address this body upon the important topics of needed reform in the laws of this State, regarding the office of CORONER, I take great pleasure in laying before you some of the facts and circumstances, that have led to this discussion, and to explain the reasons, which have led me to appeal to your powerful association, for the moral support of the medical profession of the State, in a movement in which that profession has more at stake and will gain as much as the people at large, if the movement meets with that success its importance and merits demand.

At the request of the Medico-Legal Society of New York, I had the honor at its last session to submit to that body, my views upon this subject.

The executive committee of that society at its later and very recent session, appointed Prof. Frank H. Hamilton and myself to lay the subject before your society, and to ask your aid in a movement to affect the necessary changes in the existing laws.

The courtesy of your invitation is due to these circumstances, but your meeting was so close upon the session of our executive committee that I was unable to appear at an earlier hour in your session.

The whole subject of the office of Coroner, and of procedure under the laws regulating that office, and defining its powers and duties, has been made the subject of discussion, for a few years past, and has awakened public interest, both in England and the various States of the American Union.

The attention of the British public was most pointedly called to it by the admirable address of Mr. Farrer Herschell before the British Science Association, at Liverpool, in October, 1876, and public interest in this country soon followed.

The discussion was practically opened in America by an address made by Mr. Theodore H. Tyndale, of the Boston Bar, before the Department of Health of the American Social Science Association, which appeared shortly after in the Boston Medical and Surgical Journal, of March 1, 1877.

This gentleman, with the co-operation of a few others, and the powerful aid of the State Medical Society of Massachusetts, carried that discussion before the State Legislature in a general proposition to make a complete

revolution in their system, which was substantially like our own, as inherited from our English ancestry and traditions which had handed down that strange creation of the past, the office of coroner, and what has sometimes been facetiously called "crown's quest law."

It is not too much to say that mainly through the efforts of Mr. Tynedale, and of such gentlemen as he could bring to his aid, that discussion resulted in the adoption by the Legislature of Massachusetts, of an entirely new system, which can best be explained by the law itself, which passed on May 9, 1877, which was as follows :

AN ACT to Abolish the Office of Coroner, and to Provide for Medical Examinations and Inquests in Cases of Death by Violence.

*Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. The offices of coroner and special coroner are hereby abolished.

SEC. 2. The Governor shall nominate, and by and with the advice and consent of the council shall appoint, in the county of Suffolk not exceeding two, and in each county not exceeding the number to be designated by the county commissioners as hereinafter provided, able and discreet men, learned in the science of medicine, to be medical examiners; and every such nomination shall be made at least seven days prior to such appointment.

SEC. 3. In the county of Suffolk, each medical examiner shall receive in full for all services performed by him, an annual salary of three thousand dollars, to be paid quarterly from the treasury of said county; and in other counties they shall receive for a view without an autopsy, four dollars; for a view and autopsy, thirty dollars, and travel at the rate of five cents per mile to and from the place of the view.

SEC. 4. Medical examiners shall hold their offices for the term of seven years from the time of appointment, but shall be liable to removal from office at any time by the governor and council for cause shown.

SEC. 5. Each Medical examiner, before entering upon the duties of his office, shall be sworn and give bond, with sureties, in the sum of five hundred dollars, to the treasurer of the county, conditioned for the faithful performance of the duties of his office. If a medical examiner neglects or refuses to give bond as herein required, for the period of thirty days after his appointment, the same shall be void, and another shall be made instead thereof.

SEC. 6. The county commissioners in each county shall, as soon as may be after the passage of this act, divide their several counties into suitable districts for the appointment of one medical examiner in each district under this act; and when such division is made, shall at once certify their action to the secretary of the Commonwealth, who shall lay such certificate before the governor and council. But nothing herein shall prevent any medical examiner from acting as such in any part of his county.

SEC. 7. Medical examiners shall make examinations as hereinafter provided, upon the view of the dead bodies of such persons only as are supposed to have come to their death by violence.

SEC. 8. Whenever a medical examiner has notice that there has been found or is lying within his county, the dead body of a person who is supposed to have come to his death by violence, he shall forthwith repair to the place where such body lies and take charge of the same; and if on view thereof and personal inquiry into the cause and manner of the death, he deems a further examination necessary, he shall, upon being thereto authorized in writing by the district attorney, mayor, or selectmen of the district, city, or town where such body lies, in the presence of two or more discreet persons, whose attendance he may compel by subpoena if necessary, make an autopsy, and then and there carefully reduce or cause to be reduced to writing every fact and circumstance tending to show the condition of the body, and the cause and manner of death, together with the names and addresses of said witnesses, which record he shall subscribe. Before making such autopsy, he shall call the attention of said witnesses to the position and appearance of the body.

SEC. 9. If upon such view, personal inquiry, or autopsy, he shall be of opinion that the death was caused by violence, he shall at once notify the district attorney and a justice of the district, police, or municipal court for the district or city in which the body lies, or a trial justice, and shall file a duly attested copy of the record of his autopsy in such court, or with such justice, and a like copy with such district attorney; and shall in all cases certify to the clerk or registrar having the custody of the records of births, marriages, and deaths in the city or town in which the person deceased came to his death, the name and residence of the person deceased, if known, or a description of his person as full as may be for identification, when the name and residence cannot be ascertained, together with the cause and manner in and by which the person deceased came to his death.

SEC. 10. The court or trial justice shall thereupon hold an inquest, which may be private, in which case any or all persons other than those required to be present by the provisions of this chapter, may be excluded from the place where the same is held; and said court or trial justice may also direct the witnesses to be kept separate, so that they cannot converse with each other until they have been examined. The district attorney, or some person designated by him, may attend the inquest and may examine all witnesses. An inquest shall be held in all cases of death by accident upon any railroad, and the district attorney or the attorney-general may direct an inquest to be held in the case of any other casualty from which the death of any person results, if in his opinion such inquest is necessary or expedient.

SEC. 11. The justice or district attorney may issue subpoenas for witnesses, returnable before such court or trial justice. The persons served with such process shall be allowed the same fees, and their attendance may be enforced in the same manner, and they shall be subject to the same penalties as if served with a subpoena in behalf of the Commonwealth in a criminal prosecution pending in said court, or before said trial justice.

SEC. 12. The presiding justice or trial justice shall, after hearing the testimony, draw up and sign a report in which he shall find and certify when, where, and by what means the person deceased came to his death, his name, if known, and all material circumstances attending his death; and if it appears that his death resulted wholly or in part from the unlawful act of any other person, he shall further state, if known to him, the name of such person, and of any person whose unlawful act contributed to such

death, which report he shall file with the records of the superior court in the county wherein the inquest is held.

SEC. 13. If the justice finds that murder, manslaughter, or an assault has been committed, he may bind over, as in criminal prosecutions, such witnesses as he deems necessary, or as the district attorney may designate, to appear and testify at the court in which an indictment for such offence may be found or presented.

SEC. 14. If a person charged by the report with the commission of any offence is not in custody, the justice shall forthwith issue process for his apprehension, and such process shall be made returnable before any court or magistrate having jurisdiction in the premises, who shall proceed therein in the manner required by law. But nothing herein shall prevent any justice from issuing such process before the finding of such report if it be otherwise lawful to issue the same.

SEC. 15. If the medical examiner reports that the death was not caused by violence, and the district attorney or the attorney-general shall be of a contrary opinion, either the district attorney or the attorney-general may direct an inquest to be held in accordance with the provisions of this act, notwithstanding the report, at which inquest he, or some person designated by him, shall be present and examine all the witnesses.

SEC. 16. The medical examiner may, if he deems it necessary, call a chemist to aid in the examination of the body, or of substances supposed to have caused or contributed to the death, and such chemist shall be entitled to such compensation for his services as the medical examiner certifies to be just and reasonable, the same being audited and allowed in the manner herein provided. The clerk or amanuensis, if any, employed to reduce to writing the results of the medical examination or autopsy, shall be allowed for his services two dollars per day.

SEC. 17. When a medical examiner views or makes an examination of the dead body of a stranger, he shall cause the body to be decently buried; and if he certifies that he has made careful inquiry, and that to the best of his knowledge and belief the person found dead is a stranger, having no settlement in any city or town of this Commonwealth, his fees, with the actual expenses of burial, shall be paid from the treasury of the Commonwealth. In all other cases the expense of the burial shall be paid by the city or town, and all other expenses by the county wherein the body is found.

SEC. 18. When services are rendered in bringing to land the dead body of a person found in any of the harbors, rivers, or waters of the Commonwealth, the medical examiner may allow such compensation for said services as he deems reasonable, but this provision shall not entitle any person to compensation for services rendered in searching for such dead body.

SEC. 19. In all cases arising under the provisions of this act, the medical examiner shall take charge of any money or other personal property of the deceased, found upon or near the body, and deliver the same to the person or persons entitled to its custody or possession; but if not claimed by such person within sixty days, then to a public administrator, to be administered upon according to law.

SEC. 20. Any medical examiner who shall fraudulently neglect or refuse to deliver such property to such person within three days after due demand upon him therefor, shall be punished by imprisonment in the jail or house of correction not exceeding two years, or by fine not exceeding five hundred dollars.

SEC. 21. The medical examiner shall return an account of the expenses of each view or autopsy, including his fees, to the county commissioners having jurisdiction over the place where the examination or view is held, or in the county of Suffolk to the auditor of the city of Boston, and shall annex thereto the written authority under which the autopsy was made. Such commissioners or auditor shall audit such accounts, and certify to the treasurer of the Commonwealth, or the treasurer of the county, as the case may be, what items therein are deemed just and reasonable, which shall be paid by said treasurer to the person entitled to receive the same.

SEC. 22. Whenever any sheriff is a party to a suit or proceeding, or otherwise disqualified to act therein, the sheriff or a deputy sheriff of any adjoining county may serve and execute all writs and precepts and perform all duties of such sheriff which he is disqualified to perform, and may serve and execute all such writs and precepts wherein any county, town, parish, religious society, or school district is a party or interested, notwithstanding he is at the time a member of such corporation.

SEC. 23. Whenever a vacancy occurs in the office of sheriff of any county, the senior deputy sheriff in service shall perform all the duties required by law to be performed by the sheriff, until the office of sheriff is filled in the manner required by law, giving bond as now required by law of sheriffs. And in case of such vacancy, the deputies of the sheriff vacating the office shall continue to have and exercise the power of deputy sheriffs until said office is filled as aforesaid.

SEC. 24. Sections seventy-five, seventy-six, and seventy-seven of chapter seventeen, and section one hundred of chapter sixty-three, and section eighteen of chapter one hundred and sixty-three of the General Statutes, are hereby amended by substituting for the word "coroner," wherever the same occurs, the words "medical examiner," and for the word "coroners" the words "medical examiners." The second clause of section fifty-two, and sections seventy-four, seventy-eight, seventy-nine, and eighty of chapter seventeen of the General Statutes, chapter one hundred and seventy-five of the General Statutes, chapter one hundred and thirteen of the acts of the year eighteen hundred and sixty-one, chapter one hundred and seventy-two of the acts of the year eighteen hundred and sixty-two, chapter twenty-eight of the acts of the year eighteen hundred and sixty-four, chapter two hundred and forty-one of the acts of the year eighteen hundred and seventy-one, and chapter one hundred and fifteen of the acts of the year eighteen hundred and seventy-six, and all other acts and parts of acts inconsistent herewith are hereby repealed.

SEC. 25. For the purposes of the appointment and qualification of medical examiners and the action of the county commissioners herein provided for, this act shall take effect upon its passage, and it shall take full effect on the first day of July next.

The radical changes made by this act, in Massachusetts, were three-fold.

1. The abolition of the office of coroner ;
2. The dispensing wholly with juries on the preliminary inquiry in this class of cases as unnecessary ; and
3. The adoption of a new system, by which a competent medical man took charge of the medical part of the investigation, and an arrangement for proper officials to take charge of the legal and statutory aspects of such

cases where the death was in any wise proper to be made the subject of a legal inquiry, preliminary to final trial of the accused, after indictment.

Under this change, Massachusetts appointed medical examiners for the several districts of the State, who took charge of the new system, and were appointed by the governor and council; their labors, collected by the Medico-Legal Society of Massachusetts (composed wholly, so far as active members were concerned, of these officials), furnish an admirable view of the results of a peculiarly fortunate attempt in a sister State to provide an intelligent and practicable substitute for an acknowledged faulty system, quite as bad and cumbersome as our own.

A comprehensive view of the subject can best be had by examining briefly the leading objectionable features of our present system before we need consider how we can best remedy them.

*The Present Statute Power—Duties of the Coroner's Office.*

In this State the office of coroner is elective, and held for three years. Coroners are not required to give bonds except when acting as sheriffs, when they may be required to do so.

Four coroners are elected in each county in the State, and in the city of New York the mayor is empowered to designate one to each senatorial district of that city, and assign him to duties therein. Coroners must be residents of the county in which they are elected. They may be removed for cause by the governor.

They are authorized to arrest those who disturb religious meetings; to take charge of wrecks and wrecked property, to take measures for the preservation thereof; and for its delivery to the proper owners.

They are authorized to investigate into the origin of fires, by an inspection and inquest, with a jury, with proceedings like in most respects the inquests in case of sudden death, with power to arrest, in case there is found to have been arson or an attempt at arson committed.

Whenever a coroner receives notice that any person has been slain, has suddenly died, been dangerously wounded, or found dead under such circumstances as to require an inquisition, the coroner is required to proceed to the place where the body lies, to forthwith summon a jury of not less than nine nor more than fifteen to appear forthwith to make inquisition concerning such death or wounding.

The coroner swears in the jury, summons witnesses to appear before them, presides at the inquest, swears the witnesses and reduces their testimony to writing, which is subscribed by the witnesses.

It is the duty of the coroner to summon some surgeon or physician to appear as a witness on such inquest.

The jury then inspect the body, hear the testimony, and deliver to the coroner their inquisition in writing, which the law requires shall contain their finding, as to



1. How and in what manner, and when, and where the person so dead or wounded came to his death or was wounded ; and
2. Who such person was, and all the circumstances attending such death or wounding ; and
3. Who, if any, were guilty of the same, either as principals or accessories, and in what manner.

The finding or inquisition of the jury, with the evidence of the witnesses, the coroner is required to return to the next criminal court of record in the county.

The coroner has power, on the finding of the jury, that a crime has been committed, to bind over the witnesses to appear, and to issue warrants for the arrest of accused or suspected persons.

In case of the absence or inability of the coroners to act, in the city of New York, any alderman or special justice may act in his stead, exercising the same powers and duties as the coroner. Special legislation has been enacted, from time to time, for the city and county of New York, making the practice there different from other parts of the State, and containing many objectionable provisions, mixed with much that is good and commendable.\*

The law makes it the duty of coroners to hand over to the treasurer of the county all moneys or valuables found on the bodies of persons on whom inquests have been held, which have not been claimed by the legal representatives within sixty days after the inquest has been held.

The law makes no requirement as to professional knowledge or skill for the incumbent of the office, and does not require the coroner to summon a surgeon or physician who has superior knowledge as to the matters involved, leaving it wholly in the discretion of the coroner as to what surgeon or physician he may call, except in the city of New York, and calls him when summoned simply as a witness and as other witnesses are summoned before the jury.

The governor has power to remove for misconduct in office on charges.

By analyzing our present system we will observe that if the object of an inquest should be to detect the existence or commission of crime in cases of death by violence, or sudden death, our law, as now constituted, is not well adapted for the purpose.

1. Of what practical good is the verdict of a coroner's jury on an inquest in such a case ?

Is it binding, or even influential on the accused, on the grand jury, or on the final trial ? Every one knows that it is not.

It is quite true to say that it is a useless and unnecessary expense to summon jurymen in such cases, and in no case can it help the State or the accused on the final trial, which must still occur before conviction.

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\* See " Note " at end of address.

We can not be too jealous of the right of trial by jury, but in all cases under existing law two juries must agree before any person can be convicted of crime, without counting the coroner's jury, viz.: the grand jury which presents the indictment, and the jury on the trial of the accused after indictment; so that the abolition of the jury on the preliminary inquiry, and a change as to who shall make the inquest in its stead, is not in any true sense an infringement upon the right of trial by jury, which in all cases would exist if the proposed change was made.

It is a useless hardship on the citizen to be liable to be called on a coroner's jury, and the work of investigation can be done much better and easier by competent medical officials to investigate the medical questions involved, holding them responsible for the work, carefully providing for a thorough and practical examination; and by proper judicial officers that part of the business which requires legal proceedings, adjudication, or decision as to whether a crime has been committed.

There can probably be no more startling evidence of the utter uselessness of a coroner's jury, than the statement of this fact: That whatever may be the verdict in a given case, the subsequent indictment, trial, and entire judicial proceeding is absolutely independent of it, and proceeds as if the coroner's jury had never acted at all.

The object of an inquiry when a sudden death has occurred, should be to inquire into the cause of the death.

Did it proceed from natural causes? If not, from what cause, and has a crime been committed? That is, and should be, the full scope of such an inquiry.

That such an investigation is proper, preliminary to a formal accusation is certain, because it determines, or should do so, that no trial is necessary, if the death is not by violence or is due to natural causes; and it is due to all that an intelligent and careful scrutiny should be given by competent persons, in all cases, whether doubtful or not at first.

Whether death has resulted from other than natural causes is usually a matter to be determined by a careful, competent, and thorough medical examination.

Whether a crime has been committed is not a medical question; it is rather a legal one.

What is, therefore, most needed, at once, in all such cases, is a formal and careful medical examination, by a perfectly competent medical man, upon the first inquiry, and to decide upon the facts by a careful scientific inquiry as to the cause of death.

The Massachusetts system provides an officer for that duty, and requires him by the terms of the law to be "an able and discreet man, learned in the science of medicine," to be even eligible to hold the office.

The law compels this learned and competent officer to examine the

body; and if on such examination, and after personal inquiry into the cause and manner of the death, he deems further examination necessary, he shall, on the written authorization of the district attorney, or other competent judicial authority, proceed in a specified careful way to make an autopsy in the presence of at least two discreet persons, and then *and there to carefully reduce to writing every fact and circumstance tending to show* the condition of the body and the cause and manner of death, together with the names and addresses of said witnesses, which he shall subscribe, and for which he is, of course, officially and professionally responsible.

If on this inquiry this officer, after such an examination, autopsy, and certificate, shall be of the opinion that the death was caused by violence, he is commanded to notify the competent judicial authority, and file his report and certificate with the court, who shall thereupon proceed to investigate whether a crime has been committed—which is a legal or judicial question—under certain provisions of the law, and under due legal forms, with all the force and effect of a judicial proceeding.

Under our present system, the coroner can call in any medical man, whether he is skilled in the examination required or not, in most counties of the State.

What is the necessity or value of a jury's opinion, or verdict, upon the medical question as to whether the death was by violence or from natural causes; or, on the second question, as to whether a crime has been committed, which is a judicial question; and how much more valuable would be the carefully-prepared written statement and autopsy of the competent medical man, as a permanent record in the case; or the finding of the competent judicial officer, upon evidence, in case and where, it is held that a crime has been, or even probably has been, committed, with the careful record of the facts and circumstances attending the death?

The opinion, report, and autopsy of the medical man upon the medical question is valuable throughout the whole case, and in all subsequent phases of it.

The report, evidence, and finding of the judicial officer, as to whether a crime has been committed, is also of value, but the verdict of a coroner's jury on either question, under our existing system, seems practically absurd, and experience has shown it to be both meaningless and valueless. Then why continue it?

There is no race of men more wedded to their traditions, past, and precedents than the Anglo-Saxon and their descendants. We inherit that peculiar trait of English character which makes us cling to the things and ways our fathers had and did before us. We are the last to see the absurdity of an old thing, gray with age, though quick to find it in a new.

With the venerableness of the office of coroner we have little to do, but

it is a source of absolute wonder how such an absurd and valueless office for the detection of crime should have been continued through all these centuries.

So far as his duties in case of acting in the place of the sheriff, or against the sheriff, or in regard to matters of wrecks, deodands, and forfeitures to the crown, which were his ancient duties, these are now obsolete, except in regard to the sheriff, and powers in certain other cases which would be wisely placed in some one officer in a county, but beyond that, there is no use or necessity for such an officer as the statute makes our present coroner, and the progress of events and civilization demand for us a change in this part of our system.

Before proceeding to examine into the system and practice of other countries, it might be well to ask you to look at some of the fatal defects in our own.

1. There is no existing provision compelling a careful and proper medical examination and autopsy, the absence of which, in doubtful and difficult cases, might result, and frequently does, in the entire defeat of justice.

If an autopsy is to be taken at all, in a given case, it is usually of great importance that it be promptly done, and by competent medical authority.

It would not be enough that our system provided for an autopsy. It should in all cases, when the circumstances seem to require, compel it, and provide how it should be made, and what it should certify.

2. Again, any citizen is now eligible to the office of coroner, and no precaution or safeguard is had under the law to secure an officer who is either competent to conduct the medical examination or the legal inquiry.

Most lamentable cases of ignorance of this official fill our books, and occur on all hands in practice.

The history of criminal jurisprudence in our country, as well as of England, is full of cases where most serious consequences result from the inexperience and ignorance of incompetent persons taking charge of the medical investigation as to the cause of death, or the later legal inquiry whether on the shown medical facts a crime has been committed.

In extremely doubtful cases where crime has been committed, as, for example, by poisoning, especially where very difficult to positively detect, the present system of inquest would, or might, actually prevent detection and subsequent conviction, by not having the proper medical examination and autopsy, which if properly taken would have insured detection.

The heart, lungs, stomach, intestines, and liver frequently are decisive witnesses in such cases; and how many times would such an examination and autopsy have prevented the terrible consequences of an innocent person, accused of poisoning by suspicious or jealous relations or enemies, being placed on trial, and, as we know, sometimes actually convicted of a crime they never committed or contemplated.

These delicate, difficult, and doubtful cases, where nothing but the highest character of scientific knowledge and critical examination at the time of the occurrence would detect the crime, are of course lost, and the guilty escape; and these cases the books do not show, because the real facts and circumstances do not appear, and the real record is never made.

3. The existing statute, in failing to secure a competent officer to conduct the medical examination, thus shown to be indispensably necessary in every case where a crime has been committed, or even to determine whether the death is probably from natural causes, is as faulty in making no provision for a competent person to conduct the necessary legal inquiry, as to whether a crime has been committed, in those cases where the death is clearly from violence, and not from natural causes.

The existing statute throws this inquiry upon a jury who, in the nature of things, cannot determine it judicially, and who can only conduct an inquiry upon competent evidence, with an official presiding who is not required by the law to be competent to conduct such an inquiry.

And we have gone on thus for centuries, taking the verdict of coroners' juries in these cases—absolutely valueless judicial farces, oftentimes attended with lamentable and fatal results.

In the case of William Simmons, charged with homicide, the coroner's jury, on a full hearing, pronounced the killing justifiable homicide, the prisoner having been assaulted with a deadly weapon, and having defended himself with a knife, killing his assailant while in a death struggle on the floor.

The court, however, on the trial, held against the use of a knife, even in such an extremity; and Simmons was convicted. But the governor pardoned on the merits, though the sentence was nearly out. The verdict of the coroner's jury had not the slightest legal force or effect.

Provision should be made, therefore, in the law regulating such investigations, for a proper judicial proceeding before a competent court and officer, which should be a proper, legal and necessary step toward the trial itself.

This is secured under the new Massachusetts law by directing the proceeding to be taken before a justice of the district, police, or municipal court in which the body lies, or a trial justice, which is conducted for the State by the district attorney of the county, or by some person designated by that officer.

4. If the existing law could be amended by dispensing with a jury in such cases; providing for a competent medical officer to conduct the preliminary examination under distinct methods, that would secure a record of these necessary medical facts, to answer fully the medical inquiry, with a proper provision for examination before a competent judicial tribunal in case the medical preliminary examination made that necessary, or probably so; it would be a great gain to our present system, even if we called the

medical officer by the old name of coroner. But there are so many absurdities under that system that it would doubtless be wiser, if it was decided to make a change, to abolish the office of coroner altogether, and provide for the new system by appropriate legislation, attaching those duties in respect to sheriffs, wrecks, etc., to some other officer, as, for example, the district attorney in counties, or the county treasurer; or perhaps for constitutional reasons to leave the coroner to discharge them when occasion arose.

It may be well in such an inquiry to examine the laws of other countries and their practice under them.

#### FRANCE.

In France, two distinct and separate officers take charge of all such investigations.

The legal officer, the *procureur du roi*, or, as he is now called, the procurer or attorney of the republic, analogous in some respects to our district attorney, proceeds to the place where the dead body is found, makes the investigation, summons and examines witnesses, and reduces their evidence to writing which is subscribed.

He has large power granted him as to seizing articles or papers, if connected with crime, and can restrain suspected persons from leaving the premises or the neighborhood. He has power to use experts or clever detectives, which is a part of the French system for the detection or discovery of crime. He is responsible for the case as a legal inquiry, and for all the legal questions involved.

The medical side is in charge of a medical officer, chosen for his superior and excellent medical knowledge, with almost equal powers, supreme as to the medical examination, inquiry, and all medical questions involved; and this officer, and sometimes two, are connected also with the subsequent prosecution of the criminal when a crime has been committed, or the legal officer decides that one has been committed.

The admirable writings of Emile Gaboriau well describe the powers, duties, and responsibilities of these various officers, and the excellent working of what may be called the French system, in such works as "File No. 118," "Monsieur Le Coq," "The Widow Lerouge," and other admirable works from his prolific pen.

I have thought it would interest the thoughtful student of this subject to give a resumé of the laws of France recently adopted upon this subject, in which I have received valuable assistance from my brother and colleague, Mr. Fred R. Coudert, of our Bar.

The investigation of crimes such as murder, and the preliminary investigation to establish the culpability of the murderer in case of violent death, in France, is one of the duties of the attorney of the Republic.

The duties and powers of the attorney of the Republic are defined in the Code of Instruction in Criminal Proceeding, Book I., Chapter IV.,

Section II., Articles 29 to 47, included. Among these articles, the following have especial reference to the investigation and proof of crime, and the arrest of the guilty persons.

“ART. 32. In all cases of *flagrante delicto*, when the act shall be of such a nature as to entail punishment of a degrading or ignominious character, the attorney of the republic shall himself proceed to the spot, without any delay, for the purpose of drawing the official reports which may be necessary to establish the evidence of crime, its condition, that of the surroundings, and to receive the declarations of the persons who shall have witnessed the deed, or who shall be able to give information thereon, etc.

“ART. 33. The attorney of the republic may also, in the case of the preceding article, summon such of the relatives, servants, or neighbors, as are able to give information upon the fact. He shall receive their statements, which they shall sign. The statements made in conformity with the present and the preceding article, must be signed by the parties, and in case of refusal, mention of it is to be made.

“ART. 36. The attorney of the republic shall seize the weapons, and all that shall appear to have been used, or have been intended to have been used for the commission of the crime, or the offence, as well as all that may have resulted therefrom, and, in fact, all that may throw light on the subject; he shall ask the accused party to account for the things so seized, which shall be shown to him; he will draw up an official report, which shall be signed by the accused, or mention shall be made of his refusal to do so.

“ART. 40. The attorney of the republic in such a case of *flagrante delicto*, and when the crime shall be of such a nature as to entail a degrading or ignominious punishment, shall arrest the accused persons present, against whom strong presumption may be entertained.

“If the accused is not present the attorney of the republic shall issue an order to compel him to appear. This order is called ‘Mandat d’amener.’ The information alone does not constitute sufficient presumption to authorize the issuance of such a warrant against a domiciled person.

“The attorney of the republic shall at once examine the accused brought before him.

“ART. 42. The official reports of the attorney of the republic, in pursuance of the preceding articles, shall be made and drawn up in the presence, and shall be signed by the commissary of police of the ‘Commune’ in which the crime or offence shall have been committed, or the mayor or the assistant mayor, or by two citizens domiciled in the same ‘Commune.’

“Nevertheless, the attorney of the republic may draw up the official reports without the assistance of witnesses when there is no possibility of obtaining them at once.

“Each sheet of the official report shall be signed by the attorney of the republic, and by the persons who shall have been present; in case of their refusal or inability to sign, mention shall be made thereof.

“ART. 43. The attorney of the republic shall be accompanied, if necessary, by one or more persons who may be presumed by their trade or profession to be capable of appreciating the nature and the circumstances of the crime or offence.

“ART. 44. If a violent death shall have taken place, or a death from unknown causes, or under suspicious circumstances, the attorney of the

republic shall be assisted by one or two physicians, who shall make their report as to the cause of the death, and the condition of the corpse.

“The persons who shall be summoned in the cases provided by the present and the foregoing articles, shall, before the attorney of the republic, be sworn to make their report and give their opinion according to honor and conscience.

“ART. 45. The attorney of the republic shall, without delay, transmit to the examining magistrate the official reports, instruments, documents, and weapons drawn up or seized in pursuance of the preceding articles, to be proceeded with as set forth in the chapter entitled, ‘Of Examining Magistrates’; and in the meanwhile the accused shall remain at the disposal of the judicial authorities, so that he can at any time be arrested.

“ART. 47. Except in the cases provided for in articles 32 and 46, the attorney of the republic, upon being notified by information or otherwise, that a crime or an offence has been committed in his district, or that a person charged with the commission thereof is in his district, shall call upon the examining magistrate, to order an inquiry, and even, if necessary, proceed to the spot in order to draw up all the necessary official reports, as will be found described in the chapter entitled, ‘Of Examining Magistrates.’”

When the papers have been transmitted by the attorney of the republic to the examining magistrate, the latter holds an investigation. His powers and duties are defined in the code of Examinations in Criminal Proceeding, Book F, Chapter VI., Articles 55 to 90.

The following articles in particular explain the mode of proceeding in case of murder:

“ART. 59. In all cases reported as *flagrante delicto*, the examining magistrate may directly, and of his own authority, perform all the acts attributed to the attorney of the republic, by observing the rules defined in the chapter ‘Of Attorneys of the Republic and their Substitutes.’ The examining magistrate may require the presence of the attorney of the republic, without any delay, however, as to the operations defined in said chapter.

“ART. 61. Except in cases of *flagrante delicto*, the examining magistrate shall make no investigations, and take no proceedings without informing the attorney of the republic thereof, who may, moreover, require this information to be furnished him at all stages of the investigation, subject to the obligation of returning the papers within twenty-four hours.

“The examining magistrate, however, if there be occasion for it, may issue the warrant to produce the person, and even the warrant of commitment, without its being necessary that they have been preceded by the legal conclusions of the attorney of the republic.

“ART. 62. Where the examining magistrate proceeds to the spot, he shall always be accompanied by the attorney of the republic, and the registrar of the tribunal.

“ART. 71. The examining magistrate shall summon before him such persons as shall have been indicated by information, by complaint, by the attorney of the republic, or otherwise, as having knowledge of the crime or offence, or of the circumstances.

“ART. 87. The examining magistrate shall, if required to do so, and even of his own accord, proceed to the domicile of the party charged with the



crime or the offence, in order to make a search for the papers, effects, and generally, all articles which shall be deemed necessary for arriving at the truth.

“ART. 88. The examining magistrate may likewise proceed to such other places as it is likely that articles like those mentioned in the preceding section shall have been concealed.”

Articles 91 to 112 regulate the rights of the examining magistrate to issue orders to apprehend (*comparution*), orders of commitment (*depot*), orders to produce the person (*d'amener*), and orders of arrest (*d'arret*).

Articles 113 to 126 regulate provisional release and release on bail.

Articles 127 to 136 regulate the orders to be issued by the examining magistrate when the investigation is terminated.

“ART. 133. If the examining magistrate considers the deed as one entailing punishment of a degrading or ignominious character, and that the evidence against the accused is sufficiently established, he will order that the papers in the proceedings, the official report establishing the nature of the offence, and a list of exhibits, shall be transmitted without delay by the attorney-general of the ‘Cour d'Appel,’ in order that they may be used as specified in the chapter ‘On Indictments.’

“The exhibits shall remain with the court where the examination took place, with the exceptions set out in articles 228 and 291.”

The indictment is regulated in Book II., Title II., Chapter I., Articles 217 to 250.

The trial before the Assize Court is regulated by Book II., Title II., Chapters II., III., and IV., Articles 251 to 380.

And the jury is formed and works under the same code, book, and title, Chapter V., Articles 381 to 406.

#### GERMANY.

The present law of the German Empire, adopted October 1, 1879, being the code of criminal procedure (*Straf-Process Ordnung*) regulates proceedings for this class of cases for all Germany to-day.

A judicial officer called the district attorney (*staats anwalt*) has charge of these proceedings. He is clothed with powers as full as those of our district attorney, of a committing magistrate, or a police justice. He is entitled to ask information from all public authorities, who are bound to assist him in his official duties. The police are his subordinates and under his control in all respects in the investigation of crime.

The police authorities are also bound on their own account to investigate supposed crimes, and report to this officer, especially in all cases of sudden death, or death by violence; and in these cases no interment of the body is allowed until after the consent has been obtained of the district attorney or the competent court.

There is no coroner in Germany, nor any analogous officer; nor any jury on the preliminary examination.

There are judicial district physicians or surgeons regularly appointed, who are selected for their special training and fitness for the duty. They are summoned by the district attorney, or by the police authorities, and examine the body, make the autopsy, and conduct in all respects the medical examination.

The code prescribes a form or set of special rules for the conduct of the judicial examination of the body (*gerichtliche leichenschau*), which occur under a special order of the court; and the code also provides how and in what cases and manner experts may be called in by the district attorney or the police magistrate.

The grand jury and its indictments as in our system, is unknown in Germany.

If the district attorney, after the preliminary examination and inquisition has been made, and the evidence and medical examination and report made, believes, that a crime has been committed, or that probable cause exists for such a belief, he brings on the trial by a motion to the competent court, and if the court, on such motion, after hearing the case, believes that sufficient reasons are presented, it orders a preliminary judicial investigation (*gerichtliche voruntersuchung*), which is conducted before a justice, with the assistance of the district attorney, at which the accused is heard, and is represented by counsel if he desires. The result of that preliminary investigation usually determines the matter. If the district attorney desires to press it, he moves it on; if not, the case is usually dropped.

#### SCOTLAND.

Scotland has gone off from the English system, and an officer analogous to the French procureur du roi, called a procurator fiscal, performs the duties of the preliminary investigation, much as if our district attorney was charged with the preliminary inquiry, with large powers of taking testimony and making arrests, but acting without a jury.

#### TURKEY.

In Turkey, if a death occurs in a town where there is a foreign consul, the deceased being not a native of or citizen of Turkey, the consul or legation of the nationality of the deceased, takes charge of the investigation, in such manner and form as each consul chooses, acting for his own country.

If it is a citizen that dies, there is no investigation, nor any officer even analogous to our coroner.

If the case presents aspects, which justify an official or other interference, the police take it in charge. They conduct the inquiry, and investigation as a judicial proceeding, calling witnesses, experts, and medical aid as they see fit.

These deaths are regarded more lightly in Turkey than in most European countries, and nothing resembling our inquest is known.

## GREECE.

In Greece the system in force is almost identical with that of France.

An officer analogous to the French procureur du roi takes charge of the legal side and conducts the proceedings.

A medical officer takes exclusive charge of the medical question and examination, and detectives or experts trained to the business are subject to the call of the prosecuting officer.

## RUSSIA.

The whole proceeding is in Russia placed in the charge of a judicial officer known as a Judge of instruction. He is an officer of the crown, appointed in and for each district by the central governor, or council of the province or state.

He repairs to the place and takes charge of the body of the deceased. Has power to seize all papers and correspondence, and put seals on the private papers and boxes. He summons and examines all witnesses, takes the evidence, reduces it to writing, calls experts, and examines and directs their action. He is clothed with large powers, and may arrest, and even place in close confinement an accused or suspected person.

He stands for the state as an accuser, and yet is bound in honor and conscience to act as a judge, and to act impartially for the accused.

The medical questions and the medical side of the case is in charge of a physician or surgeon who is a sworn crown officer, with a salary. He acts in conjunction with the judge of instruction, but independent of him. He is bound to make an autopsy if any suspicion or doubt exists as to crime.

He conducts the autopsy, and carefully reduces his examination and conclusions to writing, which he furnishes to the court, and also to the central medical council or board, held in every province at the seat of the government, who have a power of review of the same, in case doubt exists.

Since the year 1864, in each village of Russia certain citizens are designated by the mayor of the village, whose duty it is to attend such cases at the summons of the "juge d'instruction," aid him in the investigation by their inquiries, give evidence of the known facts, search for evidence in doubtful cases, and help so far as they can in the investigation.

They are not, however, clothed with any powers. They make no finding nor report, but are required by law to attend, and stand as a sort of watch to the proceedings, aiding the officials of the crown in the discharge of their duties.

## DENMARK.

In Denmark the State is divided into several large districts, some seventeen in number. These are subdivided into smaller districts, or counties,

in each of which a judicial officer, analagous to our county judge, is appointed, who has power over such cases.

He acts without a jury, possesses the powers of a coroner and police magistrate combined, is both prosecuting officer and judge, and if the cause proceeds to trial finally, it is before this officer.

No counsel is allowed on the preliminary investigation, even if a person is accused. This officer can make arrests, but the accused can only be held twenty-four hours without a hearing.

In the seventeen larger districts there is a judicial officer who has superior jurisdiction over the county officer, to whom the latter reports all the proceedings.

If the district judge orders the trial to proceed, it goes on before the county judge ; if not, it is usually abandoned.

In each county is also a medical officer, appointed by the crown, with a salary, who examines the medical questions, on the call of the county judge, conducts the autopsy and scientific examination, reports in writing to the county judge, and also to the central bureau of eminent physicians, called the Royal Bureau of Health. This bureau, in each district, reviews his action, and in doubtful cases take action, as in cases of poisoning or insanity, their report being made to the county judge, in writing, is usually decisive, of any issue they pass upon.

The county medical officer is first consulted on all medical questions, and is supreme except as to the review of his action by the royal health bureau.

The district officer frames the indictment, if one is found, and orders the trial to proceed before the county judge. An appeal lies first to the superior court in each district ; then to the supreme court of Denmark.

In reaching a conclusion satisfactory to ourselves it may not be uninteresting to pursue our inquiry into the

#### *Expenses of the Present System, and Economy of the change.*

If it be true that the verdict of a coroner's jury has no practical value, in determining the guilt or innocence of an accused person, it may well be said that the cost of summoning the jury, and the fees and expenses of the jurymen would, of course, be wholly saved by its abolition.

In the inquiry before the legislative committee of Massachusetts, a carefully prepared statement was made as to the expenses of the then existing system and that under the one finally adopted, and it was clearly shown that the saving in expense to the State, not taking into account the time of the jurymen was fully thirty-three per cent. in favor of the proposed change.

Mr. Tyndale, in answer to my inquiry as to the saving to the State of Massachusetts on the trials made there, under the change, reports that he

had gathered facts, enabling him to make a careful statement of the expenses attending coroners' inquests throughout the State of Massachusetts under the former law, and also the workings of the new system, and that the saving to the Commonwealth in jurors' fees, constables' fees for summoning jurors amounts to full one third of the former expenses, while the results of the scientific inquiries now made, are of great value, as the testimony is secured exactly and early in the proceedings before time and decay have made it difficult or impossible to obtain it; that where the State of Massachusetts formerly paid about twenty thousand dollars annually for scientific work under the old system, with which absolutely nothing was done—the money being virtually thrown away—it now gets its first important steps taken in criminal investigations, attended to by thoroughly competent men for about one-third less than before.

There can be no higher authority on this inquiry in that State than Mr. Tyndale, nor one who has more reliable sources of information; but on the occasion of my recent visit to Boston, as a delegate from the Medico-Legal Society of New York, to the annual meeting of the Massachusetts Medico-Legal Society, I took the opinion of Dr. Alfred Hosmer, then the president of that society, and later, Dr. Robert Amory, now occupying that chair, both medical examiners under the new law, and thoroughly familiar with the statistics upon this question, and both place the economy to the State in the actual saving of expenditure at thirty-three and one-third per cent. in favor of the new system.

There is one other consideration having an important bearing upon this branch of the inquiry that was not considered by these gentlemen, or embraced in their estimate of saving. It is this: Under the old system, if scientific evidence was called by the State, autopsies made, or chemical evidence taken, on the preliminary inquiry, it was of no value whatever on the final trial. If now taken, as, indeed, it must be, if necessary, it is of value; it has its direct relation to the case, is an important and valuable part of its record and history; and in these cases, when medical experts are called, the saving under the new system would be something great in any case, and in all doubtful and obscure ones.

It may, I think, therefore be affirmed in this discussion, without fear of contradiction, that a change in our law would be a very great economy to the State in both these important respects.

There have been some suggestions as to a chief officer and subordinates, which I regret to have heard made. They come from a too superficial view of the subject.

In the nature of things the officers throughout the State must needs be county officers; and they should have, of course, co-ordinate powers.

If in our change we do not provide for entirely competent and trained men for the work we had better not change.

An examiner-in-chief who should have control for the State, with assistants for the counties, would be simply an incongruity, and a failure.

It needs the same competent person to provide for all the work being well done, in one district that it does in another.

There is no country in the world that attempts such a plan. Co-ordinate powers to the officers, executing those within defined districts, would be the only successful plan.

Again, let it not be forgotten that under the Massachusetts law the medical examiner takes no part in the judicial branch of the inquiry. That is placed in well-defined judicial hands.

It would be as faulty to place the legal side of such a proceeding in the hands of a merely medical man, as it would to provide for a lawyer to make an autopsy, or to certify whether the death was probably due to natural causes.

A competent physician would, even under our present law, be a much better coroner than the ordinary officer, because if trained in the branch of medical knowledge involved he would be more competent to discharge the duties involved in that part of the inquiry. But he would not be as competent as even our present coroner to conduct the other duties of that office, by reason of his education, which unfits him for judicial duties.

The reforms needed in our system may be summarized as follows:—

1. The abolition of the coroner's jury, or of any jury on the preliminary investigation as useless, expensive, and not calculated to discover or detect the commission of crime, if one has been committed, or the best method of determining whether the death was by violence or from natural causes.

2. Such a change of our law, as shall place the examination of the preliminary medical inquiry, whether the death is due to natural causes or to violence, in charge of a medical man, of special knowledge on such subjects, who shall be obliged to conduct an autopsy, with power to call witnesses, and to make a scientific record of the facts and circumstances of the case substantially like that provided under the law of Massachusetts.

3. The proper method of conducting the legal inquiry as to whether a crime has been committed, if the report and examination of the medical examiners make it necessary, and defining the proper officer to conduct, and the tribunal to hear and decide it.

The district attorney of the county, or some person to be designated by him, would probably be a perfectly safe provision in our state.

Courts of justices of the peace in the various counties, and of the police justices in the cities, would be the proper judicial tribunals under our system. As constituted, they are competent to take charge of such proceedings, which should, of course, be a legitimate preliminary step for the discovery and punishment of crime in all cases.

4. If a medical man was not selected to take charge of the preliminary inquiry, as in Massachusetts, and the whole inquiry placed, as in France, in charge of a legal officer who should be of the degree of counselor at law; then, that competent medical men, selected by reason of their training and skill in this class of cases, should be designated by competent authority, such as the county judge in counties, and the chief justices of the supreme, superior, and common pleas courts in cities, of sufficient number to do the work, acting upon a salary, and sworn, as public officers, to act upon their best judgment, honor, and conscience in such cases, when called by the district attorney or other officer conducting the legal proceeding.

For practical work I believe the better change, considering our system, would be the adoption of the Massachusetts plan. It has been tried there, it works well, it could easier be carried into effect, would, I think, give greater public satisfaction, and be of greater public good.

The important obstacle is the question of how the medical examiners should be selected.

Under our system, how could we so frame the law as to have these officers selected by reason of their professional fitness for the place, and without reference to political considerations?

If thought dangerous to make the office elective here, it would certainly be safe to have them appointed, either by the governor, by and with the advice and consent of the senate, or by the county judge in counties, and the chief justice of the common pleas in this city, an office analogous to that of county judges in counties.

If the appointments were made by the governor and senate, there might be danger of political considerations influencing the appointments, rather than the peculiar fitness of the man for the office, which, perhaps, might be guarded against in the law itself to some extent.

The success of the Massachusetts plan has been due to the care the governor has taken there to select men for their peculiar fitness for the office, and wholly ignoring the political affinities of the men selected.

Governor Long, of Massachusetts, is entitled to the highest praise for his action in this respect, and his predecessor also; and if we could be sure of similar action by our executive, I know of no safer way than to allow the executive to appoint; but with past experience, it would doubtless be safer to give the appointment to the county judge of counties, and provide in the law that they shall be made without regard to political considerations, and only by reason of the competency of the officer, by his education and training, for the office.

### *The Constitutional Question.*

There are those who seek to avoid the discussion of this question upon its merits, on the ground that the coroner is an officer created by the constitution, and cannot, therefore, be abolished.

There are two ways of regarding this objection :

1. If it were true that the defects of our present system could only be remedied by an amendment to the constitution, it would be a perfectly proper subject of discussion, to inquire whether the public good would be subserved by such a change, and then take the proper course to change the constitution by amendment.

Our duty now is to inquire whether a change is desirable, and to carefully investigate the subject on its merits; to examine how the Massachusetts system works; to examine such proceedings in other countries; and to determine what is best for us, in this State, to do in such matters. The people will never find difficulties they cannot surmount, if they decide to change, in any question, even if it is constitutional.

2. To my mind, however, no amendment of the constitution is necessary to effect the proposed reforms.

While the constitution provides for the election of four coroners in each county of the State by the people, the powers, duties, and all authority of those officers are such as are given by the legislature in laws enacted from time to time upon the subject.

It is absolutely necessary that some officer should be designated to act as sheriff in cases where the sheriff was incompetent to act, by reason of being a party.

The provision as to wrecks, investigating into the cause and origin of fires, are good provisions, and the coroner's office might remain to take charge of these cases when occasion arose.

Legislation which took from the coroner all control of, or connection with cases of death by violence, or sudden death, providing new officers and methods, could be passed without conflicting with the constitution, by a simple repeal of certain existing statutes, and the passage of acts conferring these powers upon officers to be appointed by competent authority.

The abolition of the coroner's jury is certainly not in conflict with the constitution.

The creation of an officer charged with defined duties and powers, in matters of this kind is certainly not in conflict with the constitution.

The power of the legislature to define and extend the powers and duties of coroners involves the right to diminish their powers and duties, as well as to enlarge them; and if the whole business of inquests and conducting investigations in the class of cases now under consideration was taken by legislation from the present coroner and placed either under such a system as that adopted by Massachusetts, or that in vogue in France or Germany, the coroner's office would still exist; but with restricted powers; and the constitution would be inviolate. The opinions of the Supreme Court of Massachusetts upon analogous questions are, I think, conclusive upon the legal questions involved. [Vol. 117 Mass. Rep., p. 603; 1 Gray Rep. p. 1.]



I must not close without extending my thanks to the officers of the Massachusetts Medico Legal Society, Mr. Theodore H. Tyndale; Mr. Fred R. Coudert, Mr. J. P. Beder, Mr. B. Roelker, of our Bar; the consuls general of Germany, Russia, Italy, Greece, and Spain; for courtesies and information in the investigation of this subject.

#### NOTE.

The special legislation for the city and county of New York is so important for the proper understanding of the subject that the various laws are hereby collected and given for general information of the subject.

The general statutes for the State on the subject of the office of coroner are as follows:

Title VII., Article First, Chapter II., Page 1039, Banks & Bros.' Sixth Edition Revised Statutes.

"SEC. 1. Whenever any coroner shall receive notice that any person has been slain, or has suddenly died, or has been dangerously wounded, or has been found dead under such circumstances as to require an inquisition, it shall be the duty of such coroner to go to the place where such person shall be, and forthwith to summon not less than nine nor more than fifteen persons, qualified by law to serve as jurors, and not exempt from such service, to appear before such coroner forthwith, at such place as he shall appoint, to make inquisition concerning such death or wounding. [Laws of 1847, *ch.* 118, § 1.]

"SEC. 2. Any justice of the peace in each of the several towns and cities of this State, is hereby authorized and empowered, in case the attendance of a coroner cannot be procured within twelve hours after the discovery of a dead body, upon which an inquest is now by law required to be held, to hold an inquest thereon, in the same manner and with the like force and effect as coroners.

"SEC. 3. In all cases in which the cause of a death is not apparent, it shall be the duty of the justice to associate with himself a regularly licensed physician, to make a suitable examination for the discovery of said cause.

"SEC. 4. Each and every justice of the peace who shall hold inquests by virtue of this act, shall receive the same fees as are now allowed by law to coroners.

"SEC. 5. Whenever six or more of the jurors shall appear, they shall be sworn by the coroner to inquire how and in what manner, and when and where, such person came to his death or was wounded, as the case may be, and who such person was, and into all the circumstances attending such death or wounding; and to make a true inquisition, according to the evidence offered to them, or arising from the inspection of the body. [*As modified by § 2 of ch. 118 of Laws of 1847.*]

"SEC. 6. The coroner shall have power to issue subpoenas for witnesses, returnable either forthwith or at such time and place as he shall appoint therein; and it shall be the duty of the coroner to cause some surgeon or physician to be subpoenaed to appear as a witness upon the taking of such inquest.

"SEC. 7. Every person served with any such subpoena shall be liable to

the same penalties for disobedience thereto, and his attendance may be enforced in like manner, as upon subpoenas issued in justices' courts.

"SEC. 8. The jury, upon the inspection of the body of the person dead or wounded, and after hearing the testimony, shall deliver to the coroner their inquisition in writing, to be signed by them, in which they shall find and certify how and in what manner, and when and where, the person so dead or wounded came to his death or was wounded, as the case may be, and who such person was; and all the circumstances attending such death or wounding, and who were guilty thereof, either as principal or accessory, and in what manner.

"SEC. 9. If the jury find that any murder, manslaughter, or assault has been committed, the coroner shall bind over the witnesses to appear and testify at the next criminal court, at which an indictment for such offence can be found, that shall be held in the county. And in such case, if the party charged with any such offence be not in custody, the coroner shall have power to issue process for his apprehension, in the same manner as justices of the peace.

"SEC. 10. The coroner issuing such process shall have the same power to examine the defendant as is possessed by a justice of the peace, and shall in all respects proceed in like manner.

"SEC. 11. The testimony of all witnesses examined before a coroner's jury shall be reduced to writing by the coroner, and shall be returned by him, together with the inquisition of the jury, and all recognizances and examinations taken by such coroner, to the next criminal court of record that shall be held in the county.

"SEC. 12. In case of the absence of the coroners of the city and county of New York, of their inability to attend, from sickness or any other cause, at any time, any alderman or special justice of the city may perform, during such absence or inability, any duty appertaining to the coroners of the said city, under this article; and such alderman or justice shall possess the like authority, and be subject to the like obligations and penalties, as the said coroners. [*As modified, Laws of 1852, ch. 289.*]

"SEC. 13. The coroners of the several counties in this State are hereby required to deliver over to the treasurer of their respective counties, all moneys and other valuable things which have been or may hereafter be found with or upon the bodies of persons on whom inquests have been or may hereafter be held, and which shall not have been claimed by the legal representatives of such person or persons, within sixty days after this act becomes a law, in cases of inquests heretofore held; and in cases which may hereafter arise, within sixty days after the holding of any such inquest; and in default thereof, the said treasurers shall be authorized and required to institute the necessary proceedings to compel such delivery. [*Laws of 1842, ch. 155, § 1.*]

"SEC. 14. The several treasurers to whom any such valuable thing shall be delivered, pursuant to the provisions of this act, shall, as soon thereafter as may be, convert the same into money, and place the same to the credit of the county of which he is treasurer; and if demanded, within six years thereafter, by the legal representatives of the person on whom the same was found, the said treasurer, after deducting the expenses incurred by the coroner, and all other expenses of the county in relation to the same matter, shall pay the balance thereof to such legal representatives. [*Same ch., § 2.*]

“SEC. 15. Before auditing and allowing the accounts of such coroners, the supervisors of the county shall require from them, respectively, a statement in writing containing an inventory of all money and other valuable things found with or upon all persons on whom inquests shall have been held, and the manner in which the same has been disposed of, verified by the oath or affirmation of the coroner making the same, that such statement is in all respects just and true, and that the money and other articles mentioned therein have been delivered to the treasurer of the county, or to the legal representatives of such person or persons. [Laws of 1842, *ch.* 155, § 3.]

“SEC. 16. The said coroners shall be entitled to receive a reasonable compensation for making and rendering such statement, and for their trouble and services in the preservation and delivery of said effects and property, as hereinbefore provided ; and all reasonable expenses incurred by them in relation thereto, to be audited by the board of supervisors, in addition to the fees or compensation to be allowed by them for holding an inquest.” [Same *ch.*, § 4.]

The special acts relating to the city of New York are as follows :

By Laws of 1871, chapter 462, it was enacted as follows :

“SEC. 1. Hereafter when in the city and county of New York, any person shall die from criminal violence, or by a casualty, or suddenly when in apparent health, or when unattended by a physician, or in prison, or in any suspicious or unusual manner, the coroner shall subpoena a properly qualified physician, who shall view the body of such deceased person externally or make an autopsy thereon as may be required. The testimony of such physician and that of any other witnesses that the coroner may find necessary, shall constitute an inquest. For making said external examination the physician shall receive three dollars ; for making such autopsy he shall receive ten dollars, and such sums shall be a county charge, and be paid by the board of supervisors.

“SEC. 2. Should the coroner deem it necessary, he may call a jury to assist him in his investigation, or should any citizen demand that a jury be called, he shall proceed as directed by part four, title seven, article one, of the Revised Statutes.

“SEC. 3. It shall be the duty of any citizen who may become aware of the death of a person who shall have died in the manner stated in section one of this act, to report such death forthwith to one of the coroners, or to any police officer, and such police officer shall, without delay, notify the coroner of such death ; and any person who shall willfully neglect or refuse to report such death to the coroner, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the county prison not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

“SEC. 4. Any person, except the coroner, who shall willfully touch, remove, or disturb the body of any one who shall have died in the manner described in section one of this act, or who shall willfully touch, remove, or disturb the clothing, or any article upon or near such body, without an order from the coroner, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the county prison not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

"SEC. 5. Any citizen of this State not over seventy years of age and being at the time a resident of the county, may be summoned to serve as a juror upon a coroner's inquest; and any person who shall willfully neglect or refuse to serve as such juror when duly summoned, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the county prison not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

SEC. 6. The board of coroners of the county of New York may appoint a clerk, who shall receive an annual salary of thirty-five hundred dollars per year, which shall be a county charge, and payable as other county salaries are paid.

"SEC. 7. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

"SEC. 8. This act shall take effect immediately.

The previous compensation had been fixed by chapter 565, of laws of 1868, as follows:—

"SEC. 1. The Supervisors of the county of New York are hereby directed to audit the bills of the coroners of the city and county of New York for services as follows: For viewing each dead body and holding an inquest thereon, the sum of ten dollars; for summoning and swearing a jury in each inquest, five dollars; and all other fees or expenses now existing, whether by city or county usage, or by law, charged by said coroners, are hereby abolished. And no fees herein established shall be audited by said board of supervisors, or hereafter paid, except upon the sworn accounts filed with said board, and with the comptroller of said city.

"SEC. 2. This act shall take effect immediately."

In 1873, Laws of 1873, chapter 833, the following act was passed, entitled "An Act to Regulate the Fees of Coroners":

"SEC. 1. The coroners in and for the State of New York, except in the counties of New York and Kings, shall be entitled to and receive the following compensation for services performed:

"Mileage to the place of inquest and return, ten cents per mile.

"Summoning and attendance upon jury, three dollars.

"Viewing body, five dollars.

"Service of subpoena, ten cents per mile traveled.

"Swearing each witness, fifteen cents.

"Drawing inquisition for jurors to sign, one dollar.

"Copying inquisition for record, per folio, twenty-five cents, but such officers shall receive pay for one copy only.

"For making and transmitting statement to board of supervisors, each inquisition, fifty cents.

"For warrant of commitment, one dollar.

"For arrest and examination of offenders, fees shall be the same as justices of the peace in like cases.

"When required to perform the duties of sheriff, shall be entitled to and receive the same fees as sheriffs for the performance of like duties.

"Shall be re-imbursed for all moneys paid out actually and necessarily by him in the discharge of official duties.

"Shall receive for each and every day and fractional parts thereof spent in taking inquisition (except for one day's service,) three dollars.

“For performing the requirements of law in regard to wrecked vessels, shall receive three dollars per day and fractional parts thereof, and a reasonable compensation for all official acts performed, and mileage to and from such wrecked vessel, ten cents per mile.

“For taking ante-mortem statement shall be entitled to the same rates of mileage as before mentioned, and three dollars per day and fractional parts thereof, and for taking deposition of injured person in extremis, one dollar.

“SEC. 2. A coroner shall have power, when necessary, to employ not more than two competent surgeons to make post-mortem examinations and dissections and to testify to same, and fix their compensation, the same to be a county charge.

“SEC. 3. Whenever, in consequence of the performance of his official duties, a coroner becomes a witness, he shall be entitled to receive mileage to and from his place of residence, ten cents per mile, and three dollars per day for each day or fractional parts thereof actually detained as such witness.

“SEC. 4. All items of coroners' compensation shall be a county charge, to be audited and allowed by board of supervisors.

“SEC. 5. All acts and parts of acts inconsistent with this act are hereby repealed.

“SEC. 6. This act shall take effect immediately.”

This act was amended the next year, Laws of 1874, Chapter 535, by the passage of the following amendment:

“SEC. 1. The thirteenth paragraph of section one, chapter eight hundred and seventy-three, entitled ‘An Act to Regulate the Fees of Coroners,’ is hereby amended by adding thereto the words ‘as shall be allowed by the board of supervisors,’ so that said paragraph shall be read as follows:

“‘Shall be reimbursed for all moneys paid out, actually and necessarily, by him in the discharge of official duties as shall be allowed by the board of supervisors.

“SEC. 2. Section two of said act is hereby amended so as to read as follows:

“SEC. 2. A coroner shall have power, when necessary, to employ not more than two surgeons to make post mortem examinations and dissections and to testify to the same, the compensation therefor to be a county charge.

“SEC. 3. Section three of said act is hereby amended so as to read as follows:

“SEC. 3. Whenever, in consequence of the performance of his official duties, a coroner becomes a witness in a criminal proceeding, he shall be entitled to receive mileage to and from his place of residence, ten cents per mile, and three dollars per day for each day, or fractional parts thereof, actually detained as such witness.”

An act was passed in 1873, referring to the practice in the city of New York, Chapter 620, Laws of 1875, with the following provisions:

“SEC. 1. It shall be lawful for the several coroners in and for the city and county of New York, with the written consent first had and obtained of the district attorney and a justice of the supreme court within said city and county, to employ any scientific expert, engineer, or toxicologist to

examine the body of any person who shall have died from alleged criminal violence, or by casualty, or in any suspicious or unusual manner, and as to the cause of whose death the coroner shall have jurisdiction to inquire.

"SEC. 2. Upon the certificate of such employment by a coroner, with the written consent of the district attorney and a justice of the supreme court, as aforesaid, being filed with the comptroller of said city and county of New York, such scientific expert, engineer, or toxicologist shall be entitled to recover and receive as a proper claim against said city and county of New York just and reasonable compensation for his services rendered in the matter of such inquest upon the request of said coroner with such written consent as aforesaid. Such just and reasonable compensation shall be ascertained and certified to by the district attorney, justice of the supreme court, and the comptroller of said city and county of New York; and in case such just and reasonable compensation shall not be so certified and paid, such scientific expert, engineer, or toxicologist shall be entitled to maintain his proper action therefor at law to recover the same.

"SEC. 3. It shall be the duty of said board of estimate and apportionment of the said city and county of New York, to provide in each and every year, out of the moneys raised by taxation, all necessary sum or sums of money for the purpose of carrying the provisions of this act into effect, and also for paying all such sum or sums as are provided for by the following section of this act.

"SEC. 4. It shall be the duty of said board of estimate and apportionment to provide for the services of any of the class of persons mentioned in the first section of this act, which have been rendered since the first day of January, one thousand eight hundred and seventy-two, in pursuance of the direction of any coroner of said city and county, such sum of money as the district attorney, justice of the supreme court, and comptroller, as aforesaid, or a majority of them may certify to be just and reasonable; and in case of the refusal of the payment of the amount so certified, as aforesaid, by the officer whose duty it is to pay the same, the person rendering such services shall be entitled to maintain his action against said city and county of New York, or the mayor, aldermen, and commonalty thereof, or other proper officer thereof, to recover the just and full value of the services so rendered.

"SEC. 5. All acts and parts of acts inconsistent herewith are hereby repealed.

"SEC. 6. This act shall take effect immediately."

The law remained as before stated until the year 1878, when the following act was passed, entitled "An Act Relating to the Coroners of the City of New York—Their Duties and Compensation": chapter 256, Laws of 1878:

"SEC. 1. "Each of the coroners of the county and city of New York, hereafter elected as provided by law, shall be paid in full satisfaction for his services a yearly salary of five thousand dollars, and shall be allowed for contingent expenses, including clerk and office hire, and all other incidental expenses, a sum not to exceed two thousand dollars per annum, which contingent and incidental expenses shall be audited and paid as the contingent and incidental expenses of other officers of the said city and county are audited and paid; and said salary and allowance shall be in

lieu of all his fees or compensation heretofore a charge upon the county of New York or the mayor, aldermen, and commonalty of the city of New York.

"SEC. 2. In all cases where the coroners of said city and county are authorized to issue a subpoena to a qualified physician to view the body of a person deceased, or make an autopsy thereon, as may be required, the subpoena of the coroner shall hereafter be issued only to one of the physicians appointed, as in this statute directed, and it shall be the duty of the physician to whom such subpoena is so issued, to make the inspection and autopsy required, and to give evidence in relation thereto at the coroner's inquest.

"SEC. 3. The board of coroners of the city of New York shall, within five days after the passage of this act, by a writing filed in their office and published in the *City Record*, appoint four qualified physicians, who shall be residents in said city, to perform the duties in the preceding section specified, and shall be known as "coroners' physicians." Thereafter each coroner of said city elected as provided by law, shall, on assuming office, appoint successors to the physicians herein provided for. Any vacancy in the office of coroners' physicians shall be filed\* by the board of coroners. The board of coroners, for cause, may remove the physicians appointed by them.

"SEC. 4. It shall be the duty of the board of estimate and apportionment of said city, from time to time as it may determine, to fix the salary to be paid to the physicians appointed as in this statute directed for performing the duties herein provided. The salary to be paid to each of said physicians shall not in any one year exceed the sum of three thousand dollars. The salaries in this act provided for shall be paid monthly by the mayor, aldermen and commonalty of the city of New York.

"SEC. 5. Each of said coroners heretofore elected shall attend to an equal or proportionate part of the cases in which a coroner is required to act in said city and county; and after the thirty-first day of December, eighteen hundred and seventy-eight, there shall be paid to each of said coroners, during the remainder of his term of office, the fees or compensation now provided by law.

"SEC. 6. So much of section one of chapter four hundred and seventy-one, as provides 'for making said external examination, the physician shall receive three dollars; for making such autopsy he shall receive ten dollars; and such sum shall be a county charge, and paid by the board of supervisors, is hereby repealed. The act chapter five hundred and sixty-five of the laws of eighteen hundred and sixty-eight, entitled 'An Act to Fix the Compensation of the Coroners of the City and County of New York,' passed May four, eighteen hundred and sixty-eight, is also hereby repealed, but such repeal shall not take effect until the first day of January, eighteen hundred and eighty.

"SEC. 7. This act shall take effect immediately, except as herein otherwise specially provided."

At the same session the laws of 1873 were amended as follows (chapter 286, page 382):

"SEC. 1. Chapter eight hundred and thirty-three of the laws of eighteen hundred and seventy-three, entitled 'An Act to Regulate the Fees of

\* So in the original.

Coroners,' is hereby amended by the insertion of a new section immediately after the third section, as follows :

SEC. 4. The fees of jurors necessarily summoned upon any coroner's inquest shall be not to exceed one dollar for each day's service, shall be a county charge, and shall be audited and allowed by the boards of supervisors in the same manner as other fees and charges mentioned in this act. But the coroner holding such inquest and summoning said jurors shall make report to the next succeeding board of supervisors after every such inquest of the names of such jurors and the term of service of each, and upon what inquest rendered, on or before the third day of the annual session in each year.

"SEC. 2. Sections four, five, and six of said act are hereby numbered respectively, sections five, six, and seven.

"SEC. 3. This act shall take effect immediately."

The foregoing is a resumé of the existing statutes and laws of this State, in force as well in the State at large, as also those in force in the city and county of New York.

Special legislation for Kings and Erie, and some other counties of the State, have been passed, but nothing of particular interest to the question under discussion.

These and other considerations which have occurred to you as medical men, of the workings of the present coroners' system under your eyes in the various sections of the State where you reside, must have long ago decided you, that a change in the present system of coroner was an urgent necessity.

The medical profession owes a duty to itself in this matter.

It should for itself and for the sake of placing such cases in proper hands, aid this movement.

If competent medical men can be placed by law in charge of such cases, an important, forward step will be taken both for your profession and for the public weal.

The influence of the State Medical Society of Massachusetts, was enormous in influencing the Legislature of that State to abolish the office of CORONER and to put in his place the MEDICAL EXAMINER.

The State Medical Society of New York, occupies the same proud position in the EMPIRE STATE.

I ask you to endorse this movement with your unanimous vote. Let the effort when it goes to the Legislature have your hearty endorsement, not alone, but let the medical profession throughout the State, rally to a movement so intimately connected with its honor and its future.

I have the honor, gentlemen, to ask your consideration of resolutions favoring and urging this important reform upon the State Legislature.



